

supply agreement has now resigned from DFA and is now a factor, although not by itself determinative, in the Court's decision.

In addition, another of Plaintiffs' arguments similarly now lacks merit. Plaintiffs argue that, even if DFA is ultimately responsible for a judgment, it can be paid without affecting class members mailbox checks. Plaintiffs point out that DFA's joint ventures currently have more than \$1 billion in cash/value undistributed gains which, they argue, do not "belong" to DFA members. They also point to testimony that DFA has funded joint ventures from "capital resources" rather than out of the equity funds of its members. These arguments miss the mark, however, because DFA is a member owned cooperative which, if liquidated, would see its assets paid to its members, regardless of whether they are entitled to immediate distribution. So, while Plaintiffs are technically correct when they say DFA members have no guarantee of ever seeing this money, they overlook the fact that DFA members ultimately jointly own all of DFA's assets.

With respect to the other arguments raised by Plaintiffs, the Court will deal first with the characterizations employed by plaintiffs regarding the eight farmer declarations attached to DFA's motion. As noted above, Plaintiffs characterize the declarants as "hand-picked DFA insiders" who do not speak for DFA farmer members. They suggest that the declarants are not simply "farmers" who have submitted declarations but members of DFA's governing bodies who have set the policies and implemented the very practices at issue here and, in one case, personally participated in "illegal" secret payments which are alleged to be acts in furtherance of the alleged conspiracy.⁷ They further

⁷ One of the declarations was signed by Randy Mooney, who operates a 200-head dairy farm in Rogersville, Missouri and was chairman of DFA's Southeast Area Council for many years. Plaintiffs allege that Mooney approved "\$180,000 in illegal secret payments to Bucky Jones, a DFA board member and former SMA president." The Court has not considered the Mooney declaration.